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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20–24 November 2017

Opinion No. 84/2017 concerning Roberto Antonio Picón Herrera (Bolivarian Republic of Venezuela)

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/36/38), on 5 September 2017 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Roberto Antonio Picón Herrera. The Working Group requested the Government to provide a response to the communication with their observations on the case by 6 November 2017. On 3 November 2017, the Government requested an extension to the deadline for providing the information. The request was granted and the Government submitted a response to the communication on 13 November 2017. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion,

economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Roberto Antonio Picón Herrera, a 54-year-old Venezuelan national, is a systems engineer living in Caracas. Since 2011, he has worked for the Mesa de la Unidad Democrática (MUD) party in the area of organization and voting systems. In February 2017, the constituent elements of the party appointed to him to the role of coordinator of the technical support team, one of three secretariats established in the recent restructuring exercise, the others being the political support team and the social support team. He has never campaigned for any political party or worked in the civil service.

5. The source reports that on 22 June 2017, Mr. Picón was visiting a building located in Altamira in the municipality of Chacao, State of Miranda, Caracas. Mr. Picón was meeting with the owner of the building when the Bolivarian National Intelligence Service raided it without showing a warrant. During the raid, Mr. Picón was arbitrarily deprived of his liberty, together with the owner of the building and his domestic employees. When the Intelligence Service officers arrested Mr. Picón and the other individuals, they did not show them a search or arrest warrant issued by a judicial authority.

6. The source states that five days later, a request from the Second National Military Prosecutor's Office and a search warrant supposedly issued by a military judge appeared in the case file. Those documents were not displayed by the Intelligence Service officers at the time the arrests were made. The alleged search warrant was based on an Intelligence Service report which alleged that weapons and uniforms belonging to the Bolivarian National Armed Forces and other items which had been used in "violent demonstrations" in Caracas were being hidden at a residential property in the city.

7. According to the source, the report is based on information from a source referred to only as a "trusted individual". It is unclear whether the information was transmitted by anonymous persons or by some other means. The source submits that there is no link between Mr. Picón and the content of the report, or between him and the aforementioned residential property or the items located in it, which, the source alleges, were placed there by officers from the Intelligence Service. The source highlights that Mr. Picón's name does not even appear in the report.

8. The source adds that the alleged court order authorizing the raid lists the names of only 18 of the 19 officers who carried it out. Indeed, the records completed by the officers in connection with the raid and the registers of the collection and transfer of evidence contain the name of an additional officer who was not on the list of those authorized to carry out the raid. The source maintains that this implies that the team which carried out the raid included an officer who was not authorized to be there, and that the unauthorized officer collected evidence and submitted it to the military prosecutor.

9. Furthermore, the source argues that this unauthorized officer submitted evidence to the military prosecutor that, according to the record of the search, was not collected at the property. The source explains that this evidence supposedly forms the basis of the precautionary measure of pretrial detention subsequently applied to Mr. Picón and is currently being used by the military prosecution service to underpin a possible charge against him.

10. The source reports that on 25 June 2017, three days after Mr. Picón's arrest, the President of the Republic made public statements, which were broadcast on national television, indicating that Mr. Picón had been arrested on suspicion of sabotaging the election due to be held on 30 July 2017. The source emphasizes that Mr. Picón has not been charged with cyber-related offences and that, during the raid, no equipment or evidence was recovered that could support that conclusion.

11. The source reports that Mr. Picón appeared before the military courts on 26 June 2017, outside the 48-hour time frame established in the Constitution and in law within which arrested persons must be brought before a judge.[1]

12. The source emphasizes that between 22 June 2017, the date of Mr. Picón's arrest, and his court appearance: (a) there was no official information about where he was being held; (b) he was not allowed to communicate with his family or trusted counsel; and (c) he was not officially informed of the offences for which he was being detained.

13. The hearing was conducted before the Third Procedural Court of the Caracas Military Criminal Circuit by a military judge. Mr. Picón's counsel requested that the judge decline jurisdiction and transfer the case to the ordinary courts, given that Mr. Picón is a civilian and that a military trial would violate his constitutional and human rights to due process, to be heard by a judge duly appointed by law, to an independent and impartial judicial system, and to freedom and integrity of the person.

14. However, the request was disregarded and Mr. Picón was accused of the offences of treason, rebellion and theft of items belonging to the Bolivarian National Armed Forces, as established in the Code of Military Justice (arts. 464 (25), 486 (4) and 570 (1), respectively). Furthermore, Mr. Picón was ordered to be placed in pretrial detention at the headquarters of the Bolivarian National Intelligence Service, a location known as "El Helicoide", in Caracas.

15. The source reports that the decision of the military judge stemmed from the request submitted by the Second National Military Prosecutor's Office, which presented as sole evidence a number of items allegedly found at the residence Mr. Picón had been visiting: (a) electronic equipment, the contents and ownership of which are unknown; (b) an alleged fragmentation grenade, which has not been authenticated; and (c) an anonymous document dated 2003, the content of which is unrelated to the offences of which Mr. Picón is accused.

16. On 10 August 2017, the Military Prosecutor's Office charged Mr. Picón with the military offences that had been listed against him during the initial hearing.

17. The source also notes that, between the time the military judge ordered his detention and 17 August 2017, Mr. Picón was held incommunicado and was able to communicate with his family only by letter. The only exception was on 1 July 2017, when his wife was allowed to visit him for two hours. Mr. Picón's relatives have attempted to visit him on at least 18 occasions, but have been denied access to him by the Intelligence Service officials holding him in custody.

18. On Thursday, 17 August 2017, after 56 days in detention, Mr. Picón was allowed to receive visits from his family for the first time. The authorities informed his family members that they would be permitted to visit him on Wednesdays and Saturdays.

19. However, according to the source, Mr. Picón continues to be denied visits from his lawyers. The source emphasizes that this constitutes a violation of his right to due process. The situation is worsening as the preliminary hearing approaches, although no specific date for it has yet been set.

20. The source reports that, between 1 and 18 August 2017, Mr. Picón was detained in a public bathroom with another prisoner. A light bulb in the room was permanently on, there was no window or any access to daylight, and he was not permitted to go outside. The source maintains that these conditions constitute a violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

21. On the afternoon of 18 August 2017, Mr. Picón was moved to a different cell. He was transferred from the bathroom where he had been held in isolation for 17 days to a small room next to a corridor. In the corridor he is able to have contact with other prisoners and has access to a gym. Since then, he has also been permitted to walk in the corridor for up to two hours per day.

[1] Article 44 of the Constitution and article 373 of the Code of Criminal Procedure.

22. The source highlights that Mr. Picón has not had access to direct sunlight since 26 June 2017 and notes that this is also the case for the vast majority of prisoners in El Helicoide.

23. The source reports that challenges to the decision ordering his pretrial detention were filed in a timely manner. When Mr. Picón was brought before the military judge, requests were made for his arrest to be quashed and for him to be released, and for the judge to declare the case to be beyond his jurisdiction. The requests were dismissed by the judge.

24. In addition, an appeal was filed before the military judge who ordered Mr. Picón's pretrial detention. However, no response has been received.

25. Mr. Picón's counsel has also filed a complaint in connection with the pretrial detention measure. Further complaints have been lodged with the Senior Prosecutor's Office of the Public Prosecution Service since, the source maintains, the arrest and detention of Mr. Picón constitute offences under Venezuelan law. According to the source, the Public Prosecution Service launched an investigation but it has not brought to an end the situation in which Mr. Picón finds himself, nor has it named anyone as potentially responsible for his arrest or detention.

26. The source reports that 16 complaints have been filed with the Ombudsman's Office setting out the details of Mr. Picón's detention and requesting his release. A complaint has also been submitted to Prosecutor's Office No. 127 of the Caracas Metropolitan Area Judicial District in connection with the offences committed against Mr. Picón since his arrest.

27. The source submits that the detention of Mr. Picón falls within four (I, II, III and V) of the five categories identified by the Working Group as constituting arbitrary detention.

28. In connection with category I, the source notes that Mr. Picón was arrested by the Bolivarian National Intelligence Service, which did not have either an arrest warrant for him or a search warrant for the address at which he was located. Mr. Picón was not caught in the act of committing a criminal offence, but was attending a work-related meeting. The source adds that in the Bolivarian Republic of Venezuela, an arrest has no legal basis unless a warrant is obtained or the person is discovered in flagrante delicto. According to the source, the circumstances of Mr. Picón's arrest did not meet either of those criteria, and, even more seriously, the case file was tampered with after he was arrested and a prosecutor's request and a search warrant were added to it.

29. In addition, the authorities are seeking to accuse him of military offences even though the conduct of a civilian cannot correspond to such criminal offences. The charges are based on non-existent evidence that has been used, without an evidentiary review, as grounds for depriving Mr. Picón of his liberty. The offences of which he is accused are of a military nature and have no connection with the alleged facts. It is therefore clearly impossible to invoke any legal basis to justify the deprivation of liberty.

30. In connection with category II, the source notes that Mr. Picón was attending a meeting at the address of a work associate as part of his duties as coordinator of the technical support team for the MUD party. The source maintains that, as a citizen, Mr. Picón freely decided to make available his time and his knowledge of systems engineering in support of the struggle for free and fair elections. Therefore, on 22 June 2017, Mr. Picón was arrested in the course of the legitimate exercise of his right to freedom of political expression (art. 19 of the Universal Declaration of Human Rights and art. 19 of the Covenant) and his right of peaceful assembly (art. 20 of the Universal Declaration of Human Rights and art. 21 of the Covenant) — and as a result of the exercise of those rights.

31. In connection with category III, the source submits that in detaining Mr. Picón, the Bolivarian National Intelligence Service, the Military Prosecutor's Office and the military court have violated the basic rules of the right to a fair trial. Mr. Picón was arrested without being shown a warrant, nor was he caught in the act of committing an offence, and he was not brought before a judge within the 48-hour time frame set forth in the Constitution and in law.

32. In addition, the source notes that:

(a) In Mr. Picón's case, the fundamental safeguards of the right to be heard by a judge duly appointed by law and the independence and impartiality of the judiciary have been violated, since the authorities intend to try him in a military court despite him being a civilian;

(b) His right to presumption of innocence has been violated since the President of the Republic made a public statement, ahead of the initial hearing, about Mr. Picón's general responsibility, clearly influencing public opinion regarding the guilt of the accused;

(c) He has not been allowed access to his lawyer apart from when his counsel attended the initial hearing on 26 June 2017.

33. The source concludes that this case represents a grave example of the use of military courts against civilians without any military elements or connections.

34. In connection with category V, the source states that Mr. Picón's detention constitutes discriminatory treatment by the State towards Venezuelan citizens on grounds of their political opposition to the Government. Mr. Picón is a key player in the MUD party, an organization that brings together all the political parties that oppose the national Government and is therefore the main decision-making forum for the opposition parties.

35. The source notes that this is not an isolated case, but part of the systematic political persecution of opposition leaders. There have been previous serious cases against dissident citizens and political leaders.

36. Mr. Picón's role in the MUD party as technical coordinator for elections and his knowledge and skills in the area of database management have made him a key asset in providing support in the area of electoral processes and information management for political purposes. The source also submits that he was arrested just as the Government had called elections to establish a National Constituent Assembly — a time when Mr. Picón's technical assistance with electoral matters would have been invaluable. Therefore, according to the source, there are solid grounds to assert that Mr. Picón's detention was politically motivated because of his links and activism with the MUD party and that it was intended to send a message to others who, like him, might lend their technical expertise in support of similar organizations.

Response from the Government

37. The Government transmitted its response to the Working Group on 13 November 2017. The response indicated that Mr. Picón, a 54-year-old Venezuelan national, was arrested by the Bolivarian National Intelligence Service on 22 June 2017 and was transferred to detention in El Helicoide. He is accused of treason, rebellion and theft of military property.

38. The Government also reported that on 5 October 2017 the Criminal Appellate Division of the Supreme Court agreed to assume automatic jurisdiction over the case brought against Mr. Picón and his co-defendants and ordered the immediate suspension of any action in the case.

39. On the same date, the Criminal Appellate Division of the Supreme Court forwarded to the President of the Court Martial of the Military Criminal Circuit Court the notice relating to the automatic acquisition of jurisdiction in the criminal proceedings against Mr. Picón and his co-defendants. On 10 October 2017, the Criminal Appellate Division assigned Maikel José Pérez Moreno the task of overseeing the acquisition of jurisdiction over the case (case file No. 2017-301). The Government cited the provisions of article 44 of the Constitution, articles 464, 486 and 570 of the Code of Military Justice and article 234 of the Code of Criminal Procedure.

40. For the Government, the circumstances of the case, as evidenced, fully comply with the guarantees of due process relating to personal freedom set forth in the Covenant.

41. As indicated, the Government concludes that it is clear that the procedures followed by the Bolivarian National Intelligence Service in the arrest of the person in question were

fully in line with the domestic legal framework and the international treaties that the Bolivarian Republic of Venezuela has acceded to and ratified.

Additional comments from the source

42. The source alleges that in its written observations, the Government does not refute in any way the arguments contained in the initial communication, which point to the arbitrary nature of Mr. Picón's detention.

43. The source reiterates that Mr. Picón was arrested by the authorities without being shown a warrant and that he was not caught in the act of committing an offence. He was in fact arrested during a raid on a property that he does not own, without an arrest warrant and without having been caught in flagrante delicto.

44. It further noted that 72 hours after the arrest was made (and outside the legally established 48-hour time frame), the President of the Republic announced Mr. Picón's arrest on national television and publicly accused him of planning cyberattacks on the elections due to be held on 30 July.

45. In the source's view, the pretrial detention of Mr. Picón, which was ordered by a military court, breaches the international obligations of the Bolivarian Republic of Venezuela and violates national constitutional and legal provisions. The source notes that there was no justification for the precautionary measure because of the lack of any incriminating evidence, nor was any information presented in connection with the flight risk or obstruction of justice. The source reiterates the violations of due process, including the periods during which Mr. Picón was not permitted to contact anyone, the initial restrictions on his access to lawyers and the nature of the investigation against him.

Discussion

46. The Working Group is mandated to investigate all cases of deprivation of liberty imposed arbitrarily that are brought to its attention. In the discharge of its mandate, it refers to the relevant international standards set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as to the relevant international legal instruments, in accordance with its working methods.

47. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.[2]

48. The parties to this procedure accept that on 22 June 2017, Mr. Picón was arrested by officers of the Bolivarian National Intelligence Service and transferred to El Helicoide.

49. The Working Group wishes to recall that any individuals who are arrested must be informed, at the time of arrest, of the reasons for their arrest and shall be promptly informed of any charges against them.[3] The Working Group has noted that every person must be informed not only of the reasons justifying the deprivation of liberty, but also of the judicial avenues available to challenge the arbitrariness and lawfulness of the deprivation of liberty.[4] Moreover, persons deprived of their liberty are entitled to be informed by the authorities, upon apprehension, of their right to legal assistance by counsel of their choice.[5] The Working Group has also noted that "the factual and legal basis for the detention shall be disclosed to the detainee and/or his or her representative without delay so as to provide adequate time to prepare the challenge. Disclosure includes a copy of the detention order, access to and a copy of the case file, in addition to the disclosure of any material in the

[2] See A/HRC/19/57, para. 68.

[3] Article 9 (2) of the Covenant.

[4] United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), Principle 7, Right to be informed.

[5] Ibid., Principle 9, Assistance by legal counsel and access to legal aid.

possession of the authorities or to which they may gain access relating to the reasons for the deprivation of liberty."[6]

50. Faced with the allegations by the source, the Government has not proved that Mr. Picón was informed of the reasons for his arrest or was shown a warrant ordering his arrest or the raid on the property he was in. In addition, it has not proved that he was promptly informed of the charges against him. While the Government submitted a document dated October 2017 and a list of constitutional laws and criminal procedures, these do not substantiate whether the individual was arrested as part of an investigation or in flagrante delicto. Nor has the Government referenced or submitted any documentation that demonstrates the reason for his arrest. The Working Group considers that it has not received convincing information from the Government regarding the reasons for or the legal basis justifying Mr. Picón's arrest on 22 June 2017, making his detention arbitrary under category I of its methods of work.

51. The Working Group received convincing information from the source, which has not been contradicted by the Government, regarding Mr. Picón's professional duties at the time of his arrest. The Working Group is convinced that Mr. Picón worked as coordinator of the technical support team in the MUD party, with a mandate to ensure free and fair elections.

52. In the light of the fact that the Government has not provided sufficient or convincing information regarding the reasons for Mr. Picón's arrest and the fact that that he was deprived of his liberty in the context of efforts to promote free and fair elections, which are protected under the rights to freedom of expression, assembly and peaceful participation, the Working Group considers the detention of Mr. Picón to be arbitrary under category II of its methods of work, since it was motivated by his exercise of the rights enshrined in articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant.

53. The Working Group is also convinced that, following his arrest by officers of the Bolivarian National Intelligence Service, Mr. Picón was brought before the military courts, where he will be tried. In the view of the Working Group, the trial of civilians by judges under military command constitutes an irregularity;[7] furthermore, in the Group's experience, military tribunals are used as a means of dealing with political opposition groups, journalists and human rights defenders. The Working Group has indicated in its jurisprudence that the trial of civilians by military courts and the detention of civilians by military authorities are violations of both the Universal Declaration of Human Rights and the Covenant.

54. For the Working Group, one of the greatest attributes of civil judges is their independence. Military judges generally are not independent, since they must obey the orders of their superiors and are appointed by the executive branch; therefore, the separation of powers is not guaranteed. The Working Group has noted that a military court cannot be considered a "competent, independent and impartial tribunal"[8] within the meaning of article 14 (1) of the Covenant.

55. Accordingly, the Working Group finds that military tribunals are competent only in respect of military offences committed by military personnel and are not competent to hear cases in which the defendant or the victim is a civilian. Similarly, the Working Group has noted that the offences of rebellion, sedition or attacks against democratic institutions, when committed by civilians, cannot be tried by military courts.[9]

56. The Working Group, in its opinions, annual reports and other documents in which it has dealt with the issue,[10] has referred to the draft principles governing the administration of justice through military tribunals, Principle No. 4 of which (Jurisdiction of military courts

[6] Ibid., Guideline 5, Right to be informed.
[7] A/HRC/27/48, para. 66.
[8] Ibid., para. 68.
[9] Ibid., para. 69 (d).
[10] See, for example, A/HRC/WGAD/2016/15.

to try civilians) states that "military courts should, in principle, have no jurisdiction to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts."[11]

57. Similarly, the Working Group is convinced that Mr. Picón's right to presumption of innocence, as enshrined in article 14 (2) of the Covenant, was violated, since the President of the Republic publicly accused Mr. Picón of an offence before the judiciary had issued a ruling. Mr. Picón's right to a lawyer of his choosing from the moment of his arrest was also violated, and neither was he afforded sufficient time or the necessary conditions in which to adequately prepare his defence, in violation of article 14 (3) of the Covenant.

58. Accordingly, the Working Group considers that the detention of Mr. Picón is arbitrary under category III of its methods of work, because: (a) he was brought before a military court despite being a civilian; (b) his right to the presumption of innocence was violated; and (c) he was denied access to a lawyer of his choosing and was not afforded either sufficient time or the necessary conditions in which to prepare his defence, which constitute a grave failure to observe international standards relating to the right to a fair trial, as established in articles 9 to 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant.

59. The Working Group wishes to recall that, under certain circumstances, imprisonment and other forms of severe deprivation of liberty in violation of internationally recognized standards may constitute crimes against humanity.[12]

60. In recent years, the Working Group has repeatedly expressed its views on multiple arbitrary arrests of persons because they belong to the political opposition to the Government or because they have exercised their rights to freedom of opinion, of expression, of association, of assembly or of political participation.[13] In the Working Group's view, it is an attack or systematic practice on the part of the Government to deprive political opponents of their physical freedom, particularly those who are seen as opponents of the regime, in violation of fundamental rules of international law, including the Universal Declaration of Human Rights and the Covenant.

61. On the basis of the information available to it, the Working Group considers that Mr. Picón's detention by the Government is arbitrary under category V, inasmuch as it is based on political opinion as expressed through membership of the MUD party, which is contrary to international law prohibiting discrimination on such grounds and therefore violates the principle of the equality of human beings.

62. Finally, in the light of the recurrent pattern of arbitrary detention identified by international human rights mechanisms in recent years, the Government is urged to consider inviting the Working Group to make a country visit. Such visits are an opportunity for the Working Group to engage in direct dialogue with the Government concerned and

[11] E/CN.4/Sub.2/2005/9.

[12] See opinions Nos. 37/2011, para. 15, 38/2011, para. 16, and 39/2011, para. 17 (Syrian Arab Republic); Nos. 4/2012, para. 26, 47/2012, paras. 19 and 22, 34/2013, paras. 31, 33 and 35, 35/2013, paras. 33, 35 and 37, and 36/2013, paras. 32, 34 and 36 (Democratic People's Republic of Korea); Nos. 38/2012, para. 33, and 48/2013, para. 14 (Sri Lanka); Nos. 22/2014, para. 25, 27/2014, para. 32, and 34/2014, para. 34 (Bahrain); No. 35/2014, para. 19 (Egypt); No. 44/2016, para. 37 (Thailand); and Nos. 32/2017, para. 40, 33/2017, para. 10, and 36/2017, para. 110 (Iraq).

[13] Opinions Nos. 52/2017 (Gilbert Alexander Caro Alfonzo); 37/2017 (Braulio Jatar); 18/2017 (Yon Alexander Goicoechea Lara); 27/2015 (Antonio José Ledezma Díaz); 26/2015 (Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonzo Leal Toro, Carlos Pérez and Renzo David Prieto Ramírez); 7/2015 (Rosmit Mantilla); 1/2015 (Vincenzo Scarano Spisso); 51/2014 (Maikel Giovanni Rondón Romero and 316 others); 26/2014 (Leopoldo López); 29/2014 (Juan Carlos Nieto Quintero); 30/2014 (Daniel Omar Ceballos Morales); 47/2013 (Antonio José Rivero González); 56/2012 (César Daniel Camejo Blanco); 28/2012 (Raúl Leonardo Linares); 62/2011 (Sabino Romero Izarra); 65/2011 (Hernán José Sifontes Tovar, Ernesto Enrique Rangel Aguilera and Juan Carlos Carvallo Villegas); 27/2011 (Marcos Michel Siervo Sabarsky); 28/2011 (Miguel Eduardo Osio Zamora); 31/2010 (Santiago Giraldo Florez, Luis Carlos Cossio, Cruz Elba Giraldo Florez, Isabel Giraldo Celedón, Secundino Andrés Cadavid, Dimas Oreyanos Lizcano and Omar Alexander Rey Pérez); and 10/2009 (Eligio Cedeño).

with representatives of civil society, with the aim of better understanding the situation of deprivation of liberty in the country and the underlying reasons for arbitrary detention. The Working Group wishes to recall that, on 15 August 2017, it once again requested that the Government consider the benefits of a visit to the Bolivarian Republic of Venezuela.

63. Lastly, in the light of the allegations made by the source, the Working Group has decided to forward the information to the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, for their information and possible action.

Decision

64. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Roberto Antonio Picón Herrera is arbitrary under categories I, II, III and V of the methods of work, being in contravention of articles 8, 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, as well as articles 2, 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights, to which the State is a party.

65. The Working Group requests the Government to take the steps necessary to remedy the situation of Mr. Picón without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

66. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Picón immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

67. The Working Group, in accordance with paragraph 33 of its methods of work, will forward the present opinion to the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, for their information and possible action.

Follow-up procedure

68. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on follow-up action taken on the recommendations made in this opinion, including on:

(a) Whether Mr. Picón has been released and, if so, on what date;

(b) Whether Mr. Picón has been granted compensation or other reparations;

(c) Whether an investigation has been conducted into the violation of his rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Government with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

69. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

70. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. This follow-up procedure will enable the Working Group to keep the Human Rights Council informed of

the progress made in implementing its recommendations, as well as of any failure to take action.

71. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[14]

[*Adopted on 23 November 2017*]

[14] See Human Rights Council resolution 24/7, paras. 3 and 7.